

Fm:David Gange To:Michael J. D'Angelo (15712738300)

09:36 04/20/09GMT-04 Pg 01-01

Draft remarks for examiner interview 1:00 p.m. 4/20/2009

Application: 10/589,211

Filing Date: 8/11/2006

Inventor: Philip M. Sher

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April 20, 2009

In the United States Patent and Trademark Office

In re application of: Philip Michael Sher

Application Number: 10/589,211

Conf. No.: 7154

Art Unit: 3735

Examiner: D'Angelo, Michael J.

Filed: August 11, 2006

For: Fluctuating Blood Glucose Notification Threshold Profiles and

Method of Use

Draft Remarks

Honorable Commissioner of Patents and Trademarks  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir,

In response to the Office Action of March 3, 2009, please consider the following  
remarks:

Remarks/Arguments begin on page 2 of this paper.

Amdt. Dated: April 20, 2009  
Appl. No. 10/589,211  
Draft Remarks for Discussion

### Draft Remarks/Arguments

Examiner rejects claims 1-4, 7-16, 19-28, and 31-36 under 35 U.S.C. 102(e) as being anticipated by Saidara et al. (US 2005/0038332).

In paragraph [0014] applicant says:

*Embodiments of the present invention for the first time provide a method whereby a user of a continuous glucose monitor can establish continuously fluctuating upper and lower blood glucose thresholds, that when crossed by the patient's BGC, trigger notifications to the user....they allow the user to manage common fluctuations in BGC due to the short-term effects of food consumption, insulin delivery aberrations, physical activity, emotions, and unforeseen circumstances.*

As shown in Figures 1-12, embodiments of applicant's invention comprise thresholds that may fluctuate continuously over time. In contrast to applicant's continuously fluctuating thresholds, the thresholds described in Saidara are fixed, static thresholds. Examples of Saidara's fixed thresholds may be seen in Figure 4a (marked 404, 406, 410 and 412), Figure 5 (marked 502 and 504), and Figures 8a, b, c, and e.

Further, in paragraph [0091] Saidara discloses "...the qualifying range can be a closed range (e.g., but not limited to, between 100 and 150 mg/dL)...." Here Saidara suggests fixed thresholds with static values of 100 and 150 mg/dL.

In the pseudocode listed at paragraph [0094] we see the conditional expression: "IF ( $g_i$  is in range 100 - 150 mg/dL) THEN..." Again Saidara discloses fixed, static thresholds (100 and 150) rather than the continuously fluctuating thresholds of the applicant.

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In paragraphs [0120-0122] Saidara describes Figure 4 in detail citing "upper threshold value 404," "lower threshold value 406," "upper threshold value 410," and "lower threshold value 412." As is clear from Figure 4, all of these threshold values are fixed values, unlike the fluctuating threshold functions employed by applicant.

Applicant respectfully suggests that Saidara lacks all of the elements of applicant's invention and respectfully requests that the rejection be withdrawn.

Examiner rejects claims 5,6,17,18, 29 and 30 under 35 U.S.C. 103(a) as being unpatentable over Saidara in view of Glukhovsky (US 7,200,253).

For the reasons indicated above, applicant respectfully suggests that Saidara lacks elements of applicant's invention.

Examiner states "However, Glukhovsky et al. discloses marking sections (or concentration functions) with a color based on a threshold.

Glukhovsky discloses in column 7, line 16:

The chart 100 may include indication of low motility 108, which may be, for example, marks or colored or shaded regions indicating areas where motility is low enough to warrant investigation by a professional.

Glukhovsky further discloses in column 8, line 67: "For example, sections of the graph where motility falls below a certain threshold may be marked in a certain color or pattern, or may be otherwise labeled."

An examination of Figure 3 of Glukhovsky indicates that the "sections" that he refers to are portions of a graph comprising a single line. Applicant's threshold functions,

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as shown in applicant's figures, provide continuously fluctuating upper and lower bounds within which a user hopes to maintain blood glucose concentration (graphed as a third line). Applicant respectfully suggests that the "sections" of Glukhovsky do not correspond with the continuously fluctuating threshold functions of applicant's application.

Applicant respectfully requests that both rejections be withdrawn and that a timely notice of allowance be issued in this application.

Sincerely,

David M. Gange  
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609-730-1800